

Effective 5/12/2015

Part 2 Enterprise Zone Act

63N-2-201 Title.

This part is known as the "Enterprise Zone Act."

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-202 Definitions.

As used in this part:

- (1) "Business entity" means an entity, sole proprietorship, or individual:
 - (a) including a claimant, estate, or trust; and
 - (b) under which or by whom business is conducted or transacted.
- (2) "Claimant" means a resident or nonresident person that has:
 - (a) Utah taxable income as defined in Section 59-7-101; or
 - (b) state taxable income under Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information.
- (3) "County applicant" means the governing authority of a county that meets the requirements for designation as an enterprise zone under Section 63N-2-204.
- (4) "Estate" means a nonresident estate or a resident estate that has state taxable income under Title 59, Chapter 10, Part 2, Trusts and Estates.
- (5) "Municipal applicant" means the governing authority of a city or town that meets the requirements for designation as an enterprise zone under Section 63N-2-204.
- (6) "New full-time employee position" means a position that has been newly created in addition to the highest baseline count of employment positions that existed within the business entity during the previous three taxable years and is filled by an employee working at least 30 hours per week:
 - (a) for a period of at least six consecutive months; and
 - (b) where the period ends in the tax year for which the credit is claimed.
- (7) "Nonrefundable tax credit" or "tax credit" means a tax credit that a business entity may:
 - (a) claim:
 - (i) as provided by statute; and
 - (ii) in an amount that does not exceed the business entity's tax liability for a taxable year under:
 - (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
 - (B) Title 59, Chapter 10, Individual Income Tax Act; and
 - (b) carry forward or carry back:
 - (i) if allowed by statute; and
 - (ii) to the extent that the amount of the tax credit exceeds the business entity's tax liability for a taxable year under:
 - (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
 - (B) Title 59, Chapter 10, Individual Income Tax Act.
- (8) "Tax incentives" or "tax benefits" means the nonrefundable tax credits described in Section 63N-2-213.
- (9) "Trust" means a nonresident trust or a resident trust that has state taxable income under Title 59, Chapter 10, Part 2, Trusts and Estates.

Amended by Chapter 11, 2016 General Session

63N-2-203 Powers of the office.

The office shall:

- (1) monitor the implementation and operation of this part and conduct a continuing evaluation of the progress made in the enterprise zones;
- (2) evaluate an application for designation as an enterprise zone from a county applicant or a municipal applicant and determine if the applicant qualifies for that designation;
- (3) provide technical assistance to county applicants and municipal applicants in developing applications for designation as enterprise zones;
- (4) assist county applicants and municipal applicants designated as enterprise zones in obtaining assistance from the federal government and agencies of the state;
- (5) assist a qualified business entity in obtaining the benefits of an incentive or inducement program authorized by this part; and
- (6) as part of the annual written report described in Section 63N-1-301, prepare an annual evaluation that provides:
 - (a) based on data from the State Tax Commission, the total amount of tax credits claimed under this part;
 - (b) the total amount awarded in tax credits for each development zone;
 - (c) the number of new full-time employee positions reported to obtain tax credits in each development zone;
 - (d) the amount of tax credits awarded for rehabilitating a building in each development zone;
 - (e) the amount of tax credits awarded for investing in a plant, equipment, or other depreciable property in each development zone; and
 - (f) recommendations regarding the effectiveness of the program and any suggestions for legislation.

Amended by Chapter 11, 2016 General Session

63N-2-204 Criteria for designation of enterprise zones -- Application.

- (1) A county applicant seeking designation as an enterprise zone shall file an application with the office that, in addition to complying with the other requirements of this part:
 - (a) verifies that the county has a population of not more than 70,000; and
 - (b) provides clear evidence of the need for development in the county.
- (2) A municipal applicant seeking designation as an enterprise zone shall file an application with the office that, in addition to complying with other requirements of this part:
 - (a) verifies that the municipality has a population that does not exceed 20,000;
 - (b) verifies that the municipality is within a county that has a population of not more than 70,000; and
 - (c) provides clear evidence of the need for development in the municipality.
- (3) An application filed under Subsection (1) or (2) shall be in a form and in accordance with procedures approved by the office, and shall include the following information:
 - (a) a plan developed by the county applicant or municipal applicant that identifies local contributions meeting the requirements of Section 63N-2-205;
 - (b) the county applicant or municipal applicant has a development plan that outlines:
 - (i) the types of investment and development within the zone that the county applicant or municipal applicant expects to take place if the incentives specified in this part are provided;
 - (ii) the specific investment or development reasonably expected to take place;

- (iii) any commitments obtained from businesses;
- (iv) the projected number of jobs that will be created and the anticipated wage level of those jobs;
- (v) any proposed emphasis on the type of jobs created, including any affirmative action plans; and
- (vi) a copy of the county applicant's or municipal applicant's economic development plan to demonstrate coordination between the zone and overall county or municipal goals;
- (c) the county applicant's or municipal applicant's proposed means of assessing the effectiveness of the development plan or other programs within the zone once they have been implemented within the zone;
- (d) any additional information required by the office; and
- (e) any additional information the county applicant or municipal applicant considers relevant to its designation as an enterprise zone.

Amended by Chapter 11, 2016 General Session

63N-2-205 Qualifying local contributions.

- (1) An area may be designated as an enterprise zone only if the county applicant or municipal applicant agrees to make a qualifying local contribution.
- (2) The qualifying local contribution may vary depending on available resources, and may include such elements as:
 - (a) simplified procedures for obtaining permits;
 - (b) dedication of available government grants;
 - (c) dedication of training funds;
 - (d) waiver of business license fees;
 - (e) infrastructure improvements;
 - (f) private contributions;
 - (g) utility rate concessions;
 - (h) small business incubator programs; or
 - (i) management assistance programs.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-206 Eligibility review.

- (1) The office shall:
 - (a) review and evaluate the applications submitted under Section 63N-2-204; and
 - (b) determine whether each county applicant or municipal applicant is eligible for designation as an enterprise zone.
- (2)
 - (a) The office shall designate enterprise zones.
 - (b) The office shall consider and evaluate an application using the following criteria:
 - (i) the pervasiveness of poverty, unemployment, and general distress in the proposed zone;
 - (ii) the extent of chronic abandonment, deterioration, or reduction in value of commercial, industrial, or residential structures in the proposed zone, and the extent of property tax arrearages in the proposed zone;
 - (iii) the potential for new investment and economic development in the proposed zone;

- (iv) the county applicant's or municipal applicant's proposed use of other state and federal development funds or programs to increase the probability of new investment and development occurring;
- (v) the extent to which the projected development in the zone will provide employment to residents of the county and particularly individuals who are unemployed or who are economically disadvantaged;
- (vi) the degree to which the county applicant's or municipal applicant's application promotes innovative solutions to economic development problems and demonstrates local initiative; and
- (vii) other relevant factors that the office specifies in its recommendation.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-207 Quarterly consideration.

The office shall consider designating enterprise zones quarterly.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-208 Duration of designation.

Each enterprise zone has a duration of five years, at the end of which the county may reapply for the designation.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-209 Contingent designations.

- (1) The office may accept applications for, and may at any time grant, a contingent designation of any county as an enterprise zone for purposes of seeking a designation of the county as a federally designated zone.
- (2) This designation does not entitle a business operating in that county to the tax incentives under this part.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-210 Revocation of designations.

- (1) The office may revoke the designation of an enterprise zone if no businesses utilize the tax incentives during a calendar year.
- (2) Prior to that action, the office shall conduct a public hearing to determine reasons for inactivity and explore possible alternative actions.

Amended by Chapter 11, 2016 General Session

63N-2-211 Disqualifying transfers.

Except in a county of the first or second class, tax incentives provided by this part are not available to a business entity that closes or permanently curtails operations in another part of the state in connection with a transfer of any part of its business operations to an enterprise zone, if the closure or permanent curtailment is reasonably expected to diminish employment in that part of the state.

Amended by Chapter 11, 2016 General Session

63N-2-212 Business entities qualifying for tax incentives.

- (1) Except as otherwise provided in Subsection (2), the tax incentives described in this part are available only to a business entity for which at least 51% of the employees employed at facilities of the business entity located in the enterprise zone are individuals who, at the time of employment, reside in:
 - (a) the county in which the enterprise zone is located; or
 - (b) an enterprise zone that is immediately adjacent and contiguous to the county in which the enterprise zone is located.
- (2) Subsection (1) does not apply to a business entity that has no employees.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-213 State tax credits.

- (1) The office shall certify a business entity's eligibility for a tax credit described in this section.
- (2) A business entity seeking to receive a tax credit as provided in this section shall provide the office with:
 - (a) an application for a tax credit certificate in a form approved by the office, including a certification, by an officer of the business entity, of a signature on the application; and
 - (b) documentation that demonstrates the business entity has met the requirements to receive the tax credit.
- (3) If, after review of an application and documentation provided by a business entity as described in Subsection (2), the office determines that the application and documentation are inadequate to provide a reasonable justification for authorizing the tax credit, the office shall:
 - (a) deny the tax credit; or
 - (b) inform the business entity that the application or documentation was inadequate and ask the business entity to submit additional documentation.
- (4) If, after review of an application and documentation provided by a business entity as described in Subsection (2), the office determines that the application and documentation provide reasonable justification for authorizing a tax credit, the office shall:
 - (a) determine the amount of the tax credit to be granted to the business entity;
 - (b) issue a tax credit certificate to the business entity; and
 - (c) provide a duplicate copy of the tax credit certificate to the State Tax Commission.
- (5) A business entity may not claim a tax credit under this section unless the business entity has a tax credit certificate issued by the office.
- (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules describing:
 - (a) the form and content of an application for a tax credit under this section;
 - (b) the documentation requirements for a business entity to receive a tax credit certificate under this section; and
 - (c) administration of the program, including relevant timelines and deadlines.
- (7) Subject to the limitations of Subsections (8) through (10), and if the requirements of this part are met, the following nonrefundable tax credits against a tax under Title 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, are applicable in an enterprise zone:
 - (a) a tax credit of \$750 may be claimed by a business entity for each new full-time employee position created within the enterprise zone;

- (b) an additional \$500 tax credit may be claimed if the new full-time employee position created within the enterprise zone pays at least 125% of:
 - (i) the county average monthly nonagricultural payroll wage for the respective industry as determined by the Department of Workforce Services; or
 - (ii) if the county average monthly nonagricultural payroll wage is not available for the respective industry, the total average monthly nonagricultural payroll wage in the respective county where the enterprise zone is located;
 - (c) an additional tax credit of \$750 may be claimed if the new full-time employee position created within the enterprise zone is in a business entity that adds value to agricultural commodities through manufacturing or processing;
 - (d) an additional tax credit of \$200 may be claimed for two consecutive years for each new full-time employee position created within the enterprise zone that is filled by an employee who is insured under an employer-sponsored health insurance program if the employer pays at least 50% of the premium cost for the year for which the credit is claimed;
 - (e) a tax credit of 25% of the first \$200,000 spent on rehabilitating a building in the enterprise zone that has been vacant for two years or more; and
 - (f) an annual investment tax credit of 10% of the first \$250,000 in investment, and 5% of the next \$1,000,000 qualifying investment in plant, equipment, or other depreciable property.
- (8)
- (a) Subject to the limitations of Subsection (8)(b), a business entity claiming a tax credit under Subsections (7)(a) through (d) may claim the tax credit for no more than 30 full-time employee positions in a taxable year.
 - (b) A business entity that received a tax credit for one or more new full-time employee positions under Subsections (7)(a) through (d) in a prior taxable year may claim a tax credit for a new full-time employee position in a subsequent taxable year under Subsections (7)(a) through (d) if:
 - (i) the business entity has created a new full-time position within the enterprise zone; and
 - (ii) the total number of full-time employee positions at the business entity at any point during the tax year for which the tax credit is being claimed is greater than the highest number of full-time employee positions that existed at the business entity in the previous three taxable years.
 - (c) Construction jobs are not eligible for the tax credits under Subsections (7)(a) through (d).
- (9) If the amount of a tax credit under this section exceeds a business entity's tax liability under this chapter for a taxable year, the business entity may carry forward the amount of the tax credit exceeding the liability for a period that does not exceed the next three taxable years.
- (10) Tax credits under Subsections (7)(a) through (f) may not be claimed by a business entity primarily engaged in retail trade or by a public utilities business.
- (11) A business entity that has no employees:
- (a) may not claim tax credits under Subsections (7)(a) through (d); and
 - (b) may claim tax credits under Subsections (7)(e) through (f).
- (12) A business entity may not claim or carry forward a tax credit available under this part for a taxable year during which the business entity has claimed the targeted business income tax credit available under Section 63N-2-305.
- (13)
- (a) On or before November 30, 2018, and every three years after 2018, the Revenue and Taxation Interim Committee shall review the tax credits provided by this section and make recommendations concerning whether the tax credits should be continued, modified, or repealed.

- (b) In conducting the review required by Subsection (13)(a), the Revenue and Taxation Interim Committee shall:
 - (i) schedule time on at least one committee agenda to conduct the review;
 - (ii) invite state agencies, individuals, and organizations concerned with the credits under review to provide testimony;
 - (iii) ensure that the recommendations described in this section include an evaluation of:
 - (A) the cost of the tax credits to the state;
 - (B) the purpose and effectiveness of the tax credits; and
 - (C) the extent to which the state benefits from the tax credits; and
 - (iv) undertake other review efforts as determined by the chairs of the Revenue and Taxation Interim Committee.

Amended by Chapter 1, 2016 Special Session 3

63N-2-214 Annual report.

Each county applicant or municipal applicant designated as an enterprise zone shall annually report to the office regarding the economic activity that has occurred in the zone following the designation.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-2-215 Indian tribes -- Application.

- (1) For purposes of this section:
 - (a) "Indian reservation" has the same meaning as defined in Section 9-9-210.
 - (b) "Indian tribe" has the same meaning as defined in Subsection 9-9-402(6).
 - (c) "Tribal applicant" means the governing authority of a tribe that meets the requirements for designation as an enterprise zone under Subsection (2).
- (2) Indian tribes may apply for designation of an area within an Indian reservation as an enterprise zone.
- (3) The tribal applicant shall follow the application procedure for a municipal applicant in this part except for the population requirement in Subsections 63N-2-204(2)(a) and (b).

Renumbered and Amended by Chapter 283, 2015 General Session